

PAT HAYES
v.
ACTING ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 92-8-A, 92-35-A,
92-100-A, and 92-111-A

Decided June 3, 1992

Appeals from decisions concerning general, miscellaneous, and emergency short-term financial assistance.

Affirmed.

1. Indians: Financial Matters: Financial Assistance--Indians: Social Services

Under 25 CFR 20.21(e)(1), the payment standard for general assistance from the Bureau of Indian Affairs is based on the payment standard for the Aid to Families with Dependent Children program in the state where the applicant or recipient resides.

2. Indians: Financial Matters: Financial Assistance--Indians: Social Services

Under 25 CFR 20.23, the Bureau of Indian Affairs is not required to provide miscellaneous financial assistance to applicants who have other resources available to meet current living costs.

3. Bureau of Indian Affairs: Administrative Appeals: Generally

A decision signed by an Acting Area Director of the Bureau of Indian Affairs has the same status as a decision signed by an Area Director.

APPEARANCES: Pat Hayes, pro se.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Pat Hayes seeks review of four decisions of the Acting Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning his requests for general, miscellaneous, and emergency short-term financial assistance. The decisions were issued on September 4, 1991; October 1, 1991; October 31, 1991; and December 5, 1991. For the reasons discussed below, the Board affirms the Area Director's decisions.

Background

On April 2, 1991, appellant applied at the Anadarko Agency, BIA, for general assistance under 25 CFR Part 20. By letter dated April 15, 1991, he was notified that he had been approved for a general assistance payment in the amount of \$219. Appellant apparently received only one general assistance payment from BIA, covering part of the month of April 1991, before being approved for assistance under the Oklahoma Aid to Families with Dependent Children (AFDC) program in May 1991. 1/

On April 29, 1991, appellant wrote to the Agency social worker, stating:

Recently, I received \$219 for general assistance. My request was for \$735.48. My request is short by \$526.48 (\$735.48 - \$219.00).

I hereby request \$526.48 under the "Miscellaneous Assistance" (20.1(g) Subpart A, Part 20, 25 CFR).

I request \$150.00 be added for clothes for my son since he was inadvertently left out of the original request. The final request will be for \$676.48 (\$526.48 + 150.00).

This is an emergency one time request since I have made an application for the "Unemployed Parent Program" with Dept. of Human Services. [Emphasis in original.]

The Acting Superintendent, Anadarko Agency, responded on April 30, 1991, stating:

In accordance with the 25 CFR, Oklahoma Department of Human Services AFDC standards were used in determining the amount of your assistance payment. Where the Bureau operates a General Assistance Program, its standard of assistance shall be the AFDC payment standard used in the state where the applicant or recipient resides.

The AFDC grant for three persons is \$341.00. The amount of \$113.66 which is one-third was deducted leaving \$227.34 for two persons meeting blood quantum. [2/] The amount of \$227.34 prorated over thirty days is \$7.50 per day. You applied for General Assistance on 04/02/91 and were approved for yourself and your son for 29 days at \$7.50 per day for a grant in the amount of \$219.00. You have received the maximum amount of funds for which you are eligible.

1/ BIA general assistance is not available to Indians who receive financial assistance under a state AFDC program. See, e.g., 25 CFR 20.3, 20.21(c)(1).

2/ This was apparently done because appellant's wife is non-Indian.

Appellant requested a hearing under 25 CFR 20.30, stating that he wished to appeal both the April 15 and April 30, 1991, letters. ^{3/} A hearing was held at the Agency on June 5, 1991. On June 13, 1991, the Superintendent again denied appellant's request. Appellant appealed to the Area Director, who affirmed the Superintendent's decision on September 4, 1991. The Area Director stated that he had construed the appeal as one relating to appellant's request for general assistance, in part because appellant had never submitted a formal application for miscellaneous assistance. The Area Director also stated that appellant was ineligible for miscellaneous assistance because he was receiving general assistance at the time of his request.

Appellant's notice of appeal from this decision was received by the Board on October 7, 1991. The appeal was docketed as IBIA 92-8-A.

On May 30, 1991, appellant applied at the Agency for miscellaneous assistance in the amount of \$108.16 to cover mileage for trips he had made to attend classes. His application was denied on July 11, 1991. A hearing under 25 CFR 20.30 was held on August 15, 1991. The Superintendent affirmed the initial denial on August 23, 1991. The Area Director affirmed the Superintendent's decision on October 31, 1991. The Area Director found that the Agency had not acted timely in denying appellant's request, but that the untimeliness did not entitle appellant to assistance. He concluded that appellant's "application for miscellaneous assistance was improper and should not have been accepted or should have been immediately denied" (Area Director's Oct. 31, 1991, decision at 2).

Appellant's notice of appeal from this decision was received by the Board on December 2, 1991. The appeal was docketed as IBIA 92-100-A.

On July 31, 1991, appellant applied at the Agency for miscellaneous assistance in the amount of \$58.42 for mileage. The application was denied on August 7, 1991. A hearing under 25 CFR 20.30 was held on September 11, 1991. The Superintendent affirmed the initial denial on September 20, 1991. The Area Director affirmed the Superintendent's decision on December 5, 1991.

Appellant's notice of appeal from this decision was received by the Board on January 8, 1992. The appeal was docketed as IBIA 92-111-A.

On October 1, 1991, appellant wrote to the Area Director, asking him to request the Deputy Assistant Secretary - Indian Affairs to authorize

^{3/} 25 CFR 20.30(a) provides:

"Any applicant or recipient of financial assistance under this part who is dissatisfied with any decision or action concerning eligibility for or receipt of financial assistance may request a hearing before the Superintendent or his designated representative within 20 days after the date of mailing or delivery of the written notice of the proposed decision."

emergency short-term assistance under 25 CFR 20.20(c). Appellant sought \$905 under this provision for the purpose of purchasing clothes and shoes for himself and his son. The Area Director denied his request on October 4, 1991, stating in part:

Section 25 CFR 20.20(c) pertaining to special authorizations by the Deputy Assistant Secretary for emergency short term assistance applies only when individuals are not otherwise eligible under 25 CFR 20.20(a) (b) and when it is necessary to meet need as defined in 25 CFR 20.1(s) and prevent hardship caused by fire, flood or acts of nature. [Emphasis in original.]

(Area Director's Oct. 4, 1991, Decision at 2).

Appellant's notice of appeal from this decision was received by the Board on November 5, 1991. The appeal was docketed as IBIA 92-35-A.

Appellant filed briefs in all four appeals. The appeals are consolidated for purposes of decision.

Discussion and Conclusions

Appellant's appeals pertain to BIA general assistance, miscellaneous assistance, and emergency short-term assistance.

The Area Director's September 4, 1991, decision, on appeal in Docket No. IBIA 92-8-A, concerned appellant's application for general assistance. Appellant does not appear to challenge the determination of his general assistance payment per se, but, rather, appears to contend that his April 29, 1991, request for \$676.48 should have been considered as a request for miscellaneous assistance. To the extent that appellant is challenging his general assistance payment, he appears to be doing so only on the basis that he did not receive the entire amount he requested.

[1] It is clear, however, that BIA was limited in the amount of general assistance it could pay appellant. The general assistance payment standards are established by regulation. Specifically, 25 CFR 20.21(e)(1) provides: "Where the Bureau operates a general assistance program, its standard of assistance shall be the AFDC payment standard used in the State where the applicant or recipient resides." Accordingly, the Board rejects appellant's arguments insofar as they may have been directed to BIA's general assistance program.

Appellant contends that he should have been granted miscellaneous assistance for clothes and for mileage to attend classes.

25 CFR 20.23 provides: "In the absence of other resources, miscellaneous assistance shall be provided to eligible Indians * * * Provided, That they reside in areas where comparable miscellaneous assistance is not available or is not being provided to all residents on the same basis from

a State, county or local public jurisdiction." 4/ "Resources" is defined at 25 CFR 20.1(w) as "income and other liquid assets available to an Indian person or household to meet current living costs, unless otherwise specifically excluded by Federal statute."

The Area Director found that appellant had "other resources" at the time of his requests, i.e., a BIA general assistance payment in April 1991 and, beginning in May, 1991, AFDC payments from the State of Oklahoma.

[2] Under 25 CFR 20.23, BIA is not required to provide miscellaneous assistance to applicants who have other resources available to meet current living costs. Appellant had other resources. Accordingly, it was proper for the Area Director to deny appellant's requests for miscellaneous assistance on that basis.

In his October 4, 1991, decision, the Area Director declined to request the Deputy Assistant Secretary - Indian Affairs to authorize emergency short-term assistance for appellant for the purpose of buying clothes and shoes. 25 CFR 20.20(c) provides:

Upon written request of an appropriate tribal governing body or the appropriate Bureau line official, the Deputy Assistant Secretary may authorize emergency short-term assistance and services to Indians, not otherwise eligible under this part, who reside on a reservation or in designated near-reservation areas, when necessary to meet need as defined at [§ 20.1(s). 5/] and prevent hardship caused by fire, flood or acts of nature.

Appellant does not contend that his needs arose from fire, flood, or acts of nature. The Board concludes that appellant's request cannot be construed as falling within the scope of this section. Therefore, it finds that the Area Director properly declined to forward appellant's request for assistance to the Deputy Assistant Secretary under this provision.

Appellant makes several arguments concerning the manner in which his requests for assistance were processed. He argues, inter alia, that the BIA officials who signed the decisions in his appeals lacked authority to do so because they were not the Area Director, but only acting in

4/ "Miscellaneous assistance" is defined at 25 CFR 20.1(q) as "a financial payment made for burial services, to facilitate the provision of emergency food or disaster programs, or for other financial needs not defined in this part but related to assistance for needy Indians."

5/ 25 CFR 20.1(s) defines "need" as "the deficit after consideration of income and other liquid assets necessary to meet the cost of basic need items and special need items as defined by the Bureau standard of assistance for the State in which the applicant or recipient resides."

that position; that his rights under the Privacy Act, 5 U.S.C. § 552a (1988), were violated; that the hearings conducted on his applications failed to comply with the requirements of the Administrative Procedure Act (APA), 5 U.S.C. § 554 (1988); and that he was denied due process of law.

[3] Three different individuals signed the decisions in appellant's appeals as "Acting Area Director." As Acting Area Director, they each had the same authority to issue decisions as the Area Director himself. Accordingly, their decisions have the same status as decisions issued by the Area Director. See Ute Mountain Ute Tribe v. Acting Assistant Secretary for Indian Affairs, 11 IBIA 168, 90 I.D. 169 (1983).

Appellant's allegations concerning Privacy Act violations apparently stem from his objection to the fact that BIA officials, including the Acting Area Directors, reviewed his files in the process of deciding his appeals. It is clear that no violation of the Privacy Act occurred in these circumstances. The Department's Privacy Act regulations provide at 43 CFR 2.56:

(a) Prohibition of disclosure. No record contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) General exceptions. The prohibition contained in paragraph (a) does not apply where disclosure of the record would be:

(1) To those officers or employees of the Department who have a need for the record in the performance of their duties.

This regulation authorized disclosure of information in appellant's file to those BIA employees and officials involved in preparing and deciding his appeal. These employees and officials did not violate appellant's rights under the Privacy Act by reviewing his files in order to process his appeal.

Appellant contends that the hearings conducted by the Anadarko Agency pursuant to 25 CFR 20.30 violated the APA. 5 U.S.C. § 554 (1988) applies to "every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing." (Emphasis added.) The hearings provided pursuant to 25 CFR 20.30 are not "required by statute"; rather, they are allowed by the regulations as an accommodation to applicants for BIA financial assistance. The hearings did not violate the APA as alleged by appellant.

With respect to appellant's allegations of due process violations, the Board has reviewed the administrative record and finds no evidence of any such violations.

The Board finds that appellant has not shown error in any of the Area Director's four decisions. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, those decisions are affirmed.

Anita Vogt
Administrative Judge

I concur:

Kathryn A. Lynn
Chief Administrative Judge